Special meeting of ECOSOC on “International Cooperation in Tax Matters”

Outcome

Newsletter of FfDO/DESA Number 2013/6, June 2013

ECOSOC discussion on “International Cooperation in Tax Matters”

Overview

Pursuant to its resolution 2012/33, the Economic and Social Council held, on 29 May 2013, a one-day special meeting to consider international cooperation in tax matters, including institutional arrangements to promote such cooperation, with the participation of representatives from national tax authorities and ministries of finance.

The main event of the meeting was an official launch of the *UN Practical Manual on Transfer Pricing for Developing Countries* (the Manual), which had been adopted by the Committee of Experts on International Cooperation in Tax Matters (the Committee) at its eighth session (Geneva, 15-19 October 2012). The launch was followed by an interactive discussion on “*Transfer pricing challenges for developing countries*”, which included examples from Brazil, China, India and Thailand.

The meeting also featured a panel discussion on “*Capacity development*”, with the participation of major international organizations active in the tax area, such as the United Nations, International Monetary Fund (IMF), World Bank, Organisation for Economic Co-operation and Development (OECD), the Inter-American Centre of Tax Administrations (CIAT) and the African Tax Administration Forum (ATAF). It was followed by an interactive discussion on “*Current issues in countering international tax avoidance and tax evasion*”, during which several initiatives undertaken at the international level to address these areas of concern were discussed.

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The meeting emphasized the central role of the Council in promoting the work of the Committee and its cooperation with concerned multilateral bodies and relevant regional and sub-regional organizations and provided a unique opportunity for a global dialogue among all stakeholders in the area of tax and development.

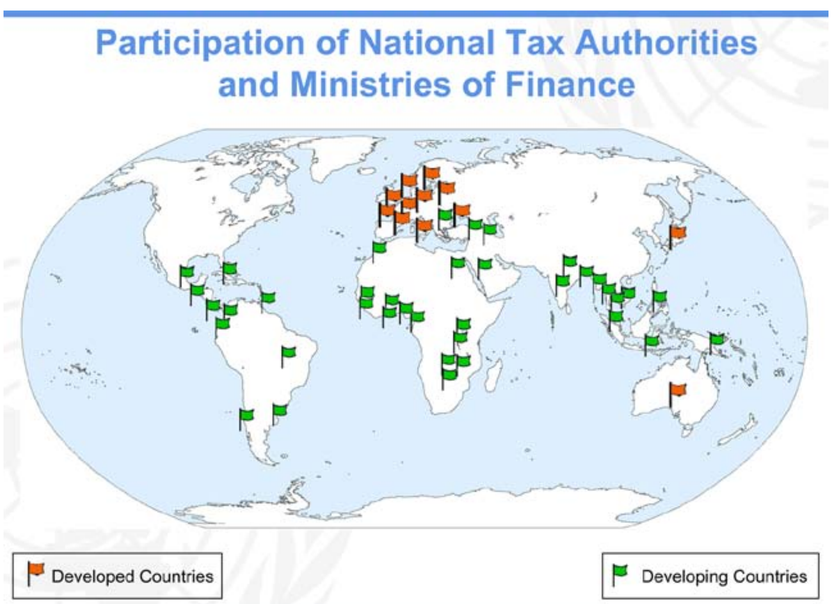
The ECOSOC meeting was preceded by an expert group meeting on “Extractive industries taxation”, held on 28 May 2013, with a view to advancing the work of the Committee. Following the ECOSOC meeting, FfDO/UN-DESA organized jointly with the International Tax Compact (ITC), a technical capacity-building meeting on "Tax treaty administration and negotiation", held on 30-31 May 2013.

A week-long series of official and expert-level meetings, held back-to-back, created significant synergies in terms of securing participation of representatives of national tax authorities, promoting joint and complementary activities of international and regional organizations, and encouraging exchanges between UN delegates and experts from academia, civil society and the private sector, for the benefit of developing countries.

Detailed information on the meeting is posted at: http://www.un.org/esa/ffd/tax/2013ITCM/index.htm

Participation

At the invitation of the President of ECOSOC, an unprecedented number of 56 representatives from national tax authorities and ministries of finance participated in the meeting, representing 50 countries, including 37 developing countries, namely: Australia, Azerbaijan, Bahamas, Bangladesh, Barbados, Brazil, Burkina Faso, Cambodia, Cameroon, Chile, Colombia, Costa Rica, Ecuador, Egypt, Estonia, European Union, Finland, France, Gambia, Georgia, Germany, Ghana, Guatemala, India, Indonesia, Italy, Japan, Malawi, Malaysia, Mexico, Morocco, Myanmar, Nepal, Netherlands, Nigeria, Norway, Papua New Guinea, Philippines, Republic of Moldova, Rwanda, Saudi Arabia, Senegal, Switzerland, Thailand, Uganda, Ukraine, Uruguay, Viet Nam, Zambia, and Zimbabwe. The meeting was also attended by seven members of the Committee.



Opening of the meeting

Following the opening remarks by the President of ECOSOC, **H.E. Mr. Néstor Osorio (Colombia)**, the Assistant Secretary-General for Economic Development of UN-DESA, **Ms. Shamshad Akhtar**, introduced the report of the Secretary-General on "Further progress in strengthening the work of the Committee of Experts on International Cooperation in Tax Matters" (E/2013/67). The report highlighted the major recent outputs of the Committee, such as the 2011 revision of the *United Nations Model Double Taxation Convention between Developed and Developing Countries* (the UN Model) and the 2012 *United Nations Practical Manual on Transfer Pricing for Developing Countries* (the Manual). Those achievements had demonstrated a prominent role of the United Nations in the area of international tax cooperation, in particular with regard to its development dimension. The report also reviewed current developments and prospects regarding the deficiencies and gaps in international tax cooperation, as identified in the last year's report (E/2012/8) and suggested possible ways of addressing them. The report concluded that while the unique and distinct role of the Committee was well accepted, additional resources were urgently needed to support its work and to enable it to fully meet its mandate.

Panel discussion on "*Capacity development*"

Mr. Alexander Trepelkov, Director, Financing for Development Office, UN-DESA, provided an update on the progress in developing and implementing the UN capacity development program on international tax cooperation, which aimed at supporting and disseminating the outputs of the Committee. Accordingly, the current focus of the program is on strengthening capacity of developing countries to: (i) negotiate, administer and interpret tax treaties, drawing on the 2011 version of the UN Model; (ii) apply the transfer pricing analysis and, in particular, the "arm's length principle" to transactions between associated enterprises of multinational groups; and

(iii) develop more effective and efficient tax systems, including improved tax administration processes and systems. The program is being implemented with limited in-house resources and relies on joint work with partners in order to avoid duplication and promote complementarities.

Ms. Marlies de Ruiter, Head, Tax Treaty, Transfer Pricing & Financial Transactions Division, Center for Tax Policy and Administration, OECD, stressed the importance of building developing countries' tax-administration skills and the benefits these skills provided to those countries. Commenting on the impact of aid in this area, the speaker demonstrated, with country examples, that a relatively small amount of aid delivered to tax administrations could yield important outcomes in terms of the amount of taxes collected by these administrations. Overall, however, according to the speaker, very little Official Development Assistance (ODA) was generally applied towards tax administrations and tax policies. Speaking about the OECD capacity development programs in taxation, she emphasized the inclusiveness of the OECD's initiatives, such as the Global Forum on Transfer Pricing and the Task Force on Tax and Development, which reached out beyond the OECD membership. She also pointed out the OECD contribution to the UN work and the fact that the UN was an observer to the OECD Committee on Fiscal Affairs.

Mr. Socorro Velazquez, Director, Planning and Institutional Development, CIAT, began his presentation by briefly introducing his organization and its membership, which had recently expanded beyond Latin America and Caribbean to include some African, Asian and European countries. The capacity development activities undertaken by CIAT utilize the following modalities: seminars and conferences, technical assistance, studies, workshops, network meetings and working groups, and master programs. In these activities, CIAT contributes to the strengthening of the tax administrations of its member countries, through ensuring: the tax administrations' integrity and impartiality; continuity of appropriate tax administrations; and taxpayers' confidence. Specific topics of interest to CIAT member countries include market segment audit specialization, FDI and double tax treaties, taxation of cross-boarder transactions, cooperation and mutual assistance between tax administrations with a view to preventing tax evasion.

Mr. Lincoln Marais, Director, Institutional Development, ATAF, began his presentation by introducing his organization, which had come into existence in 2009 with its membership including 36 African Tax Administrations. In its capacity development program, the ATAF puts special emphasis on peer learning and, according to the speaker, this approach has generated a lot of interest among members. ATAF has conducted a number of regional and sub-regional studies to determine the most urgent needs of its members. The Forum responded with creating three working groups on transfer pricing, exchange of information, and indirect taxes. Mr. Marais also talked about collaboration with other international organizations such as CIAT, the Commonwealth Association of Tax Administrators (CATA), OECD and regional economic blocs, including the Southern African Development Community (SADC), the East African Community (EAC), and the Economic Community of West African States (ECOWAS).

Mr. Michael Keen, Deputy Director, Fiscal Affairs Division, IMF presented an overview of his organization's capacity development program in the area of taxation. In addition to long-term objectives of revenue mobilization for development and macroeconomic stability, the program aims to promote simpler, more efficient, more transparent and fairer tax systems, in order to promote growth, equity and good governance. In addition, IMF has developed some tools for a rapid response in times of crisis, which address declining levels of tax compliance, help taxpayers cope, and strengthen fiscal institutions. To achieve its objectives, IMF relies, among other instruments, on its regional centers and collaborates with other technical assistance providers. In conclusion, the speaker expressed the view that there was a lot to be done in capacity development in the area of taxation and, in view of the limited resources available, each organization should focus its activities on its comparative advantage. He also pointed out that the group of organizations active in the area of taxation was becoming increasingly large and diverse, which was desirable but made it critical and challenging to manage the emerging relationships.

Mr. Richard Stern, Global Product Specialist for Business Taxation, World Bank Group, ,presented an overview of the World Bank's capacity development program in the area of taxation. In addition to the traditional goal of raising revenue for government expenditure, the program has recently added a new dimension, namely focus on development and growth goals. This includes creating a "culture of taxation", regularization of the rule of law and enhancing tax transparency in order to increase the size of the formal sector and to promote growth. Most of the specific activities of the program focus on transfer pricing, with a view to combating tax evasion and capital flight, and more broadly on the issues of base erosion and profit shifting (BEPS). To achieve these objectives, the World Bank has developed its technical assistance program, which incorporates collaboration with others at the national, regional and global level.

Overall, the discussion took stock of the progress made in cooperation among various organizations involved in the area of international taxation and demonstrated clear intention on behalf of these organizations to further enhance their cooperation, in order to avoid duplication and capitalize on complementarities.

Panel discussion on "Current issues in countering international tax avoidance and tax evasion"

The discussion was moderated by **Mr. Hugh Ault**, Professor Emeritus, Boston College of Law School, who introduced the topic, which in his view rose important questions for both developed and developing countries from a variety of different perspectives.

Mr. Philip Baker, QC, Gray's Inn Tax Chambers, United Kingdom, addressed the topic of improper use of tax treaties as a basis for tax avoidance. In this respect, he recalled the important work done by the Committee in updating the UN Model. In particular, the speaker made a reference to the revised Commentary on Article 1 of the UN Model, which now included a survey of various ways, in which countries could ensure that tax treaties were not used improperly and provide practical examples of commonly used approaches.

Ms. Marlies de Ruiter, Head, Tax Treaty, Transfer Pricing & Financial Transactions Division, Center for Tax Policy and Administration, OECD, introduced the work, which was currently being done by the OECD, on the important issue of BEPS. This work aims at effectively addressing the growing concern that existing rules may allow for the allocation of taxable profits to locations different from those where the actual business activities take place. The speaker mentioned that the OECD was finalizing a comprehensive action plan to address BEPS, which would identify actions needed and consider the best way to implement in a timely way the measures that governments can agree upon.

Mr. Thomas Neale, Head of Unit, Company Taxation Initiatives, DG TAXUD, European Commission, introduced the action plan adopted by the European Commission to fight against tax fraud and tax evasion. This includes actions against tax havens, which facilitate tax evaders and avoiders by storing money offshore, often unreported and untaxed, and actions against aggressive tax planning by big businesses or individuals, which exploit the limits of the law with the aim of minimizing taxes paid.

During the **discussion**, all countries agreed on the need to strengthen international cooperation in tax matters and on the important role of the UN work in this area. However, the discussion revealed the continued divide between developing and developed countries on the specific proposal by the G77 and China on the conversion of the Committee of Experts into an intergovernmental body. Developing countries emphasized the need to establish a truly universal and inclusive body for international tax cooperation at the intergovernmental level, which would provide a level playing field by giving developing countries a "full seat" and "equal voice" at the table, and thus supported the conversion. Developed countries, on the other hand, did not address the issue of conversion and focused on the need to fight against tax evasion and tax fraud. Many developing countries called for additional resources to support the work of the Committee.

The representative of **Fiji**, speaking on behalf of the G77 and China, reiterated the call by the group to change the status of the Committee of Experts to an intergovernmental universal body of the UN, with experts representing their respective governments. In the view of this group of countries, this transformation was necessary in order to allow all Member States to have an equal say on issues related to tax matters. The role of the UN on international cooperation in tax matters was especially important as it was the only true global forum with universal relevance and participation. The Group also called for contributions to the trust fund in order to support the work of the Committee, as well as increase the participation of experts from developing countries.

The representative of **Haiti**, speaking on behalf of the Caribbean Community (CARICOM), reaffirmed the important role of the UN in addressing matters related to international tax cooperation, given its universality and legitimacy and providing an opportunity for all Member States to participate on an "equal footing". The broad and diverse membership of the UN also allows for a variety of perspectives, realities and priorities in the consideration of international cooperation in tax matters. In its statement, CARICOM also fully supported the proposal of the G77 and China, which called for the conversion of the Committee of Experts into an intergovernmental subsidiary body of ECOSOC, as it would allow for proper intergovernmental consideration of issues of international tax cooperation. It also expressed the view that the special meetings of ECOSOC on international tax cooperation represented an important step in this direction, as they provided a unique opportunity for global dialogue on international tax matters.

The representative of the **European Union** stated that the work of the Committee was extremely valuable and exemplified what the UN could do efficiently with modest resources. He also noted that in times of tight budgetary constraints, combating tax fraud and tax evasion was essential for the political and social acceptability of fiscal consolidation. Accordingly, the EU was stepping up the fight against tax evasion and tax fraud. The speaker also touched upon the capacity development activities undertaken by the European Commission, directed towards countries that were committed to transparency, exchange of information and fair tax competition.

The representative of **France** spoke against tax evasion and tax fraud and pointed out that his country was a driving force in efforts to combat tax evasion within the frameworks of the G20, OECD and the European Union. Tax evasion created uncertainty and unfavorable competition, causing problems for developing countries. He called for the entire international community to be involved in dealing with tax evasion keeping in mind some specific domestic conditions of each country, while developing guidelines. In conclusion, the speaker invited the UN to play a more prominent role in this regard.

Launch of the UN Practical Manual on Transfer Pricing for Developing Countries

The center piece of the afternoon session was an official launch of the *UN Practical Manual on Transfer Pricing for Developing Countries*. The main purpose of the Manual is to help mitigate developing countries' vulnerability to abuse and revenue loss from tax evasion in the complex area of transfer pricing, resulting from their limited and insufficient capacities and resources in this area.

Mr. Alexander Trepelkov, Director, Financing for Development Office, UN-DESA, emphasized the relevance of transfer pricing issues for the Financing for Development agenda, as a result of an increased role of multinational groups and intra-group transactions in global trade and investment flows. The speaker provided examples of how transfer mispricing could lead to profit shifting, and thus reducing the amount of tax revenue available to countries for funding their development objectives. Apart from tax base erosion and tax evasion, it can also lead to double taxation, which might undermine the investment climate for foreign direct investment.

Mr. Armando Lara Yaffar (Mexico), Chairperson, UN Committee of Experts on International Cooperation in Tax Matters outlined the history of the work of the Committee on transfer pricing. He emphasized that the Manual had been intended for practical use from the start, and the views of all Member States were taken into account in its development. It was a "living document", with some of its technical details still under discussion. Noting that the Manual had been drawn up with few resources, he asked ECOSOC to consider allocating greater resources to the Committee in the future for its other equally important work streams. He also expressed gratitude to the Subcommittee on Transfer Pricing, which had undertaken "gargantuan" efforts to draft the Manual.

Mr. Stig Sollund (Norway), Coordinator, Subcommittee on Transfer Pricing, outlined the key features of the Manual. He started his presentation by delineating the reasons why the Manual was needed, including the need for tax to develop and sustain public services, importance of determining the right amount of profits of companies to a country's tax base, and avoiding double taxation of business profits. Then, the speaker briefly described the chapters of the Manual and outlined its main contributions from the point of view of developing countries. The Manual provides explanatory guidance with examples on how to apply the "arm's length principle" in accordance with Article 9 of the UN Model. It also reflects the realities of developing countries at their relevant stages of capacity development and pays special attention to the experiences of these countries.

Panel discussion on "Transfer pricing challenges for developing countries"

The discussion was moderated by **Mr. Michael Lennard**, the Secretary of the Committee, who began the discussion by stating that transfer pricing frameworks had been getting more attention since the beginning of the international financial crisis. Various factors contributed to this, including the need for domestic resource mobilization amidst economic downturn, heightened media and civil society awareness and discussions at the G20 level. Challenges related to transfer pricing are the same for developed and developing countries. However, developing countries are often less well equipped to deal with them.

Ms. Phensuk Sangasubana (Thailand), Head, International Tax Division, Bureau of Tax Policy and Planning, Revenue Department, provided an overview of Thailand's experience on transfer pricing. The Revenue Department has been working on their transfer pricing framework since 2002 and has to date used departmental provisions on how to apply the "arm's length principle" to related transactions between associated enterprises. A recent study conducted by the Revenue Department made several recommendations pertaining to transfer pricing and the Department is thus in the process of overhauling their tax system and plans to introduce specific transfer pricing legislation. The speaker identified cost sharing agreements, intangible assets, business restructuring and comparability analysis as the main challenges. Thailand is in favor of Advance Pricing Agreements (APAs) but recognizes that it is time and resource consuming especially for countries that are at the beginning of their transfer pricing journey.

Mr. Marcos Aurélio Pereira Valadão (Brazil), Member, UN Committee of Experts on International Cooperation in Tax Matters, shared the transfer pricing practice of his country. The Brazilian transfer pricing laws, which were enacted in 1996 and amended in 2012, allow for certain transfer pricing methods and distinguish between goods, commodities, services and import and export transactions. When using the "Resale Price Method" and the "Cost Plus Method", the transfer pricing law prescribes fixed margins depending on the economic sector of the taxpayer. According to the speaker, the predetermined margins methodology has many advantages, such as its easy and low-cost application and implementation for taxpayers and the tax administration, stable expectations, a level playing field for companies and the fact that it renders comparables unnecessary.

Ms. Anita Kapur (India), Member, UN Committee of Experts on International Cooperation in Tax Matters, outlined how, in her view, developing countries should proceed with their transfer pricing journey. The speaker stressed that stable legislation, public database, skill development of tax auditors and performance management should be established before the beginning of a country's transfer pricing journey. She suggested that in order to ensure that a transfer pricing framework was dynamic, a country should make use of public pressure over unethical tax behavior of companies and take a long-term perspective on transfer pricing in relation to the size of the market and future growth prospects. In addition, an extensive treaty network would facilitate exchange of information and make the implementation of a transfer pricing regime easier.

Mr. Shanwu Yuan, International Tax Director, Baker&McKenzie Consulting LLC; and Member of the UN Subcommittee on Transfer Pricing, speaking in his personal capacity, focused on how China treats intangible assets and risk in transfer pricing. He stated that intangibles were over-priced and had been used to extract value from developing countries. He distinguished between two types of intangibles, namely marketing intangibles (such as trademarks), which augmented value but did not create value, and trade intangibles (such as patents), which might create value. China may impose withholding tax on the transfer or the use of intangibles in China and will tax multinational enterprises (under Article 5 on permanent establishment) if intangibles are used in China. According to the speaker, risks do not generate profits but are rather by-products of profits that enterprises have to deal with. Additionally, they should align with the functions and assets of the enterprise.

Stig Sollund (Norway), Coordinator, Subcommittee on Transfer Pricing, gave a perspective on transfer pricing rules at the international level. The speaker stressed that the "arm's length principle" would remain a cornerstone and mentioned the on-going work at the OECD on BEPS in general and on safe harbours and the simplification of documentation rules in particular. The next Membership of the Committee is expected to undertake further work on the Manual, including adding chapters on intangibles, services and cost contribution arrangements.

In the ensuing **dialogue**, a number of speakers confirmed that transfer pricing was an emerging issue and that tax avoidance and tax evasion were critical challenges. The representative of **Nepal** added that the Manual would help his country resolve some of those problems, but stressed that it would still require further support and capacity-building efforts. Meanwhile, the representative of **Finland** underscored the importance of the ECOSOC discussion, welcoming the fact that the United Nations had taken "a very practical approach" in dealing with complicated tax questions.

Romania's representative asked whether the panelists foresaw the possibility of merging the UN Model with the OECD Model Tax Convention on Income and on Capital into one model in the future. Mr. Armando Lara Yaffar replied that the Committee had already laid out an agenda for its next session, and that question was not included. Mr. Stig Sollund added that, while there was broad consistency between the two models, he did not foresee that the two approaches could be joined as they had their distinct areas of use.

Closing of the meeting

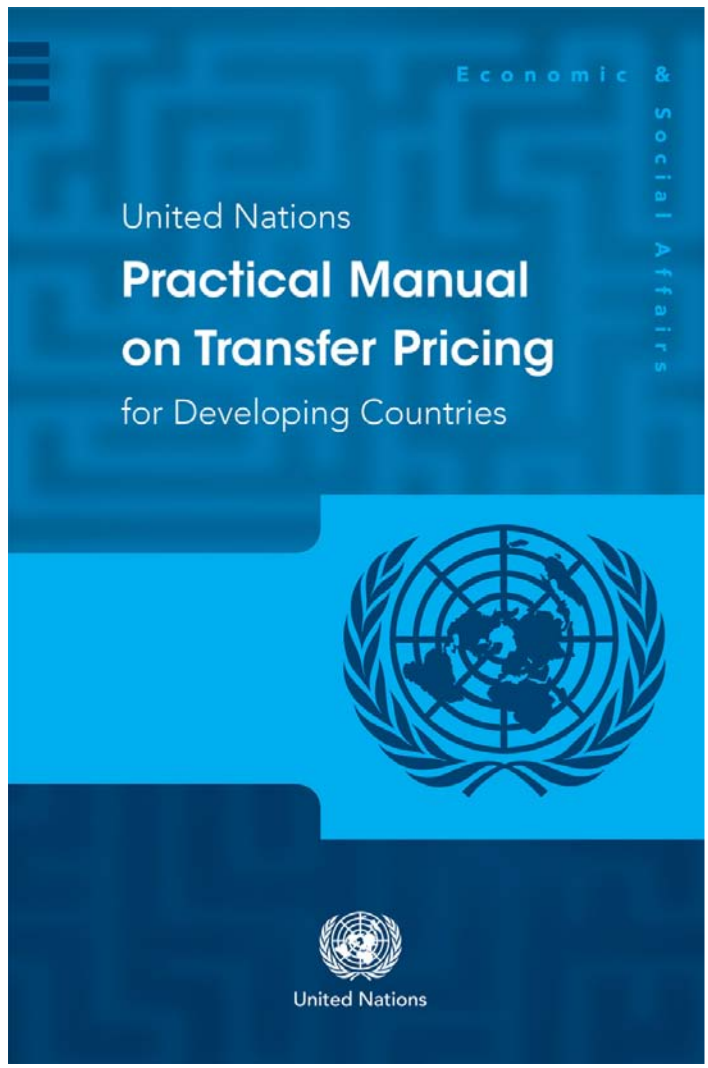
The President of ECOSOC, **H.E. Mr. Néstor Osorio**, concluded the meeting by highlighting the main points of discussions. He recalled the outcome document of the Rio+20 Conference, which recognized the need for significant mobilization of resources to promote sustainable development. In his view, the special meeting of ECOSOC illustrated that appropriate tax policies and combating tax evasion were important elements in raising revenues to finance public investment. Therefore, international tax cooperation could play a significant role in a financing for sustainable development.

Given the complexity of the international taxation issues, developing countries needed assistance in strengthening their capacities to address various aspect of this area. In this connection, the speaker noted a great progress in cooperation between various organizations involved in the area of international taxation with a view of avoiding duplication and capitalizing on complementarities, as evidenced by the presentations by their representatives at the meeting. Several concrete proposals on joint activities were mentioned, including the planned joint UN-OECD initiatives in the area of capacity development.

The discussion of several international initiatives to address the international tax avoidance and tax evasion demonstrated how critical international cooperation was in countering international tax avoidance and tax evasion. These issues needed to remain high on the agenda of all the international organizations, which were called upon to strengthen their cooperation and increase efforts in this area.

Transfer pricing, which was the focus of the afternoon session, had become an important international tax issue as a result of increased role of the multinational groups and intra-group transactions in global trade and investment. In this connection, according to the speaker, the adoption of the Manual marked a great achievement of the Committee as the Manual provided an important practical tool of great value to developing countries. The discussion underlined the relevance of transfer pricing for developing countries. Examples from Brazil, China, India and Thailand revealed the difficulties faced by developing countries, including those in finding relevant comparables. The discussion also demonstrated the great value of South-South sharing in this area. In this respect, the need for more inputs from developing countries for the next edition of the Manual was noted.

In conclusion, the President expressed the view that these special meetings of ECOSOC on international tax cooperation emphasized the central role of the Council in strengthening the work of the Committee and its cooperation with concerned multilateral bodies and relevant regional and sub-regional organizations. They also provided a unique opportunity for a global dialogue among all stakeholders in the area of tax and development.■



For further Information

Please refer to the Financing for Development Web site at www.un.org/esa/ffd/tax/2013ITCM/